

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Legislation to Create a Second Deputy Director
of Central Intelligence

1. This memorandum is in response to your desire to create a second statutory Deputy Director of Central Intelligence. If a second statutory position is created, the relative seniority of the two Deputies will hinge, in large part, on which acts for the Director in his absence. We believe the range of choice on this question is limited by the existing structure of the National Security Act of 1947 and the intent of Congress when it created the Agency through the Act. Attached are three alternative draft bills. Each deals with this problem in a different way. The first bill (Tab A) is the most faithful to the structure of the 1947 Act and is consistent with the intent of Congress when it established the Agency, in its role of the central coordinator of all foreign intelligence activities of the United States. It provides that the Deputy for CIA would act for the Director in his absence. However, we understand that you may want the Deputy for the IC to act for you in your absence. In our view, and as discussed below, express legislation to this effect is not a realistic option. Therefore, we have included two other options: the second bill (Tab B) provides that the Deputy for CIA would be Acting DCI in the Director's absence, except for IC matters otherwise delegated; and the third bill (Tab C) simply creates two Deputies and is silent on respective duties and seniority. Theoretically, the Director

could fill in the gaps through delegation. It is questionable, however, whether delegation would be appropriate that would contradict the intent of Congress as expressed in the 1947 Act.

2. Explicit statutory subordination of the Deputy for CIA to the Deputy for IC would conflict with the structure of the National Security Act of 1947 and would, therefore, require a fundamental revision of that Act. It is doubtful whether Congress would accept the necessary changes or even be willing to address them this year.

3. Section 102(d) of the National Security Act of 1947 places on the CIA the responsibility for advising the NSC on intelligence activities; making recommendations to the NSC for coordination of intelligence activities; and evaluating, correlating and disseminating intelligence. Structurally, therefore, the various authorities and responsibilities which the Director relies upon in his IC role are derived from the Agency. The Director exercises them by virtue of his position as head of the Agency. Indeed, the Act confers only one responsibility on the Director which is not directly related to his position as Agency head, i.e. the protection of intelligence sources and methods. Without a wholesale revision of the 1947 Act, the Agency's responsibilities could not be taken out of the Agency and vested in a new Deputy for the IC. Such a revision would require placing in the office of DCI all the responsibilities and authorities currently vested in the Agency. The press of elections and the self-imposed discipline of the Congressional Budget Act make it unlikely that Congress would tackle such a major reworking of the 1947 Act in the 94th Congress. Even if it

chose to, it is questionable whether Congress would accept the changes contemplated. There are those in Congress who would view subordinating the Agency to an IC Deputy as a blow to the concept of "central" intelligence and to the independence of the Agency. Friend and foe alike would view this as a step toward military control of the Agency.

4. The practical side of this problem is clearer if the various roles of the DCI are considered. As recognized in E.O. 11905, the Director is the executive head of the CIA, and derivatively, the President's primary advisor on foreign intelligence, the Chairman of the CFI, and a member of the Operations Advisory Group. It can be argued that the Deputy for IC would be the proper Acting Chairman of the CFI in the DCI's absence. But it seems clear that the Deputy for CIA should assume the other roles. For example, it is the Agency which has the responsibility for conducting and managing covert action and it would not make sense to have the individual whose responsibility is to give staff support to CFI represent the Agency on the Operations Advisory Group. This is the thinking behind the approach taken in the second bill. This bill would make the Deputy for CIA the Acting DCI in the Director's absence, except for the Director's CFI duties, which could be performed by the Deputy for IC. There are obvious conceptual difficulties with such an arrangement. It could still be argued that Agency responsibilities were being transferred outside the Agency. There are also real practical problems involved in dual leadership. Good management dictates that there be one alter-ego for the Director. The President and the Congress should not be expected to sort out whether a particular

problem is an Agency or a Community one and thus which Deputy has the final word. In addition, serious problems could arise in interstitial areas, with the result that there would be no single authority.

5. If the primacy of the Deputy for the IC is to be achieved in spite of the 1947 Act, the approach in the third bill, i.e. simply creating a second Deputy and remaining silent on the question of duties and seniority, has some appeal. ~~While it would be poor legislation from a drafting~~ From a legislative drafting standpoint, there is nothing inherently wrong with such a statute. It would not, on its face, be disruptive of the 1947 Act, and it would seem to give the Director maximum flexibility. However, this by no means would be assured. The construction of the statute would depend on the supposed intent of Congress in enacting it. Unless Congress expressly states an intent to give the Director full discretion on matters of order of succession, alternative constructions would be possible. It could be argued that the very structure of the Act indicated Congress' intent that the Deputy for the Agency would be the senior Deputy. It could be argued that Congress intended the President to set the order of succession. This is the case with State Department order of succession (E.O. 10839). The President also designates the order of succession in the Department of Defense (10 U.S.C. 134). Another serious disadvantage with this approach is that, by leaving the question of precedence unsettled, it could lead to enduring conflict between the Agency and the IC, especially whenever there was a change in any ^{of the} three top positions.

6. The real problem with the approach suggested in the third bill is that it only side-steps the central problem temporarily, and, therefore, leaves open the question whether it would be at all appropriate for the

Director to transfer Agency responsibilities to the Deputy Director for IC. If the third alternative was used as a device to make that transfer, we believe such action would be contrary to the intent of Congress, as expressed in the 1947 Act. This would leave such a transfer open to political, if not legal attack.

7. It is not necessary for you to subordinate the Deputy for CIA to the Deputy for IC in order to implement E.O. 11905 or to strengthen your role as DCI. These can be accomplished well within the framework of the National Security Act. The problem comes when it is perceived that the Director's IC role can only be enhanced by subordinating the Agency. The more distance a Director puts between himself and the Agency, the more tenuous his claims to a supra-departmental role becomes. Unless we are prepared to propose wholesale revision of the 1947 Act, or are prepared to risk further development of an IC concept that is already overreaching its statutory basis, we should opt for ~~either~~ the first draft bill ~~on the grounds~~ as ^{at} these alternatives most faithful to the 1947 Act.